

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CLIFTON D. COX, JR.,

Plaintiff,

vs.

WAL-MART STORES, INC.

Defendant.

8:05CV473

ORDER

This matter is before the court on Defendant's Motion to Dismiss (Filing No. 13), and Plaintiff's Objection to Defendant's Motion to Dismiss (Filing No. 17). In defendant's motion, it argues that the court should dismiss plaintiff's complaint without prejudice because he failed to satisfy the conditions precedent to filing this lawsuit by exhausting his administrative remedies under 42 U.S.C. § 2000e. Defendant contends that plaintiff never filed an administrative charge or received a right-to-sue letter from the appropriate administrative agency.

However, in compliance with this court's December 21, 2005 Order, the plaintiff submitted a copy of his timely filed administrative charge and right-to-sue notice from the Equal Employment Opportunity Commission ("EEOC"). And while plaintiff's claim of back pay may be questionable in light of the absence of any reference to back pay in the administrative charge, this matter will not be decided in this motion to dismiss, rather, the court will wait for a more factually developed record.

Therefore, defendant's motion to dismiss without prejudice is denied and the parties shall recommence discovery.

IT IS SO ORDERED:

1. Defendant's Motion to Dismiss (Filing No. 13) is denied;
2. Plaintiff's Objection to Defendant's Motion to Dismiss (Filing No. 17) is granted;
3. The parties shall recommence discovery.

February 24, 2006.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge